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ALEXANDER L. STEVAS.
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NO. 83-449

IN THE SUPREME COURT
OF THE UNITED STATES

OCTOBER TERM, 1983

BURKE DISTRIBUTING CORPORATION,
d/b/a B & W TRANSPORTATION, et al.,
Appellants

V.

COMMONWEALTH OF MASSACHUSETTS,
Appellees

ON APPEAL FROM THE SUPREME
JUDICIAL COURT FOR THE
COMMONWEALTH OF MASSACHUSETTS

MOTION TO AFFIRM

FRANCIS X. BELLOTTI
ATTORNEY GENERAL

FREDERICK W. RILEY
Assistant Attorney General
Chief, Criminal Bureau

BARBARA A.H. SMITH
Assistant Attorney General
Chief, Criminal Appellate
Division

WILLIAM D. LUZIER, JR.
Assistant Attorney General
One Ashburton Place
Boston, Massachusetts 02108
Tel: (617) 727-2240

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The Appellee moves the Court to affirm the judgment of the Supreme Judicial Court of Massachusetts on the ground that it is manifest that the questions on which the decision of the cause depends are so unsubstantial as not to need further argument.

I. INTRODUCTION

The facts are outlined in the opinion of the Supreme Judicial Court for the Commonwealth of Massachusetts, 388 Mass. 799, 448 N.E.2d 728 (1983).^{1/} The regulation in question is 730 C.M.R. §4.02.^{2/}

II. ARGUMENT

A. The Decision Of The Supreme Judicial Court Employs Analysis Which Fully Comports With The Decisions Of This Court.

The equal protection analysis of the Supreme Judicial Court of the regulations limiting tandem trailers traveling the Massachusetts Turnpike to

^{1/} Appearing in Appellant's Appendix A., pp. A.1-11 hereinafter referred to as App. A.; A. 1-11.

^{2/} App. I; A. 49-50.

gross weights of 127,400 pounds while allowing single tractor-trailers of gross weights up to 99,000 pounds to use the same roadway must begin with the findings by the trial court that the allowable weights of single units on the Turnpike were increased pursuant statutes which prohibited the Turnpike Authority from disallowing travel on the Turnpike by vehicles which could otherwise travel on the other public ways of the Commonwealth.^{3/} The trial court also found that the Authority had increased those single unit weights against the recommendations of its chief engineer and consulting engineering firm.^{4/}

^{3/} App. B., A-16; App. A, A-2 ftnt. 5.

^{4/} [Id.].

However, the only roadway in the Commonwealth of Massachusetts which may be traversed by tandem trailer units is the Massachusetts Turnpike.^{5/}

Beginning with this basis the Supreme Judicial Court rejected the trial court's findings that the regulation did not bear a reasonable relation to the impact on turnpike bridges.^{6/}

Massachusetts courts have always afforded the same presumption of constitutionality to regulations enacted pursuant to statutory authority as is afforded to legislative enactments.

Greenleaf Fin Co. v. Small Loans

^{5/} App. B., A-13; App. A., A-2.

^{6/} App. A., A-4.

Regulatory Board, 377 Mass. 282, 293, 385 N.E.2d 1364 (1979). This Court has also consistently afforded a presumption of constitutional validity to such enactments. See, for example, Goldblatt v. Hempstead, 369 U.S. 590, 596 (1962) and cases cited. See also, New Orleans v. Dukes, 427 U.S. 297, 303 (1976).

Overcoming this presumption is a heavy burden. It is only the "invidious discrimination, the wholly arbitrary act, which cannot stand consistently with the Fourteenth Amendment." New Orleans v. Dukes, supra at 303-304. So long as the classification rationally furthers a legitimate state purpose it will stand. Some reasonable basis is all that is necessary for a classification to withstand attack. It need not result in a mathematical

certitude so long as any state of facts reasonably may be conceived to justify it. Dandridge v. Williams, 397 U.S. 471, 485 (1970); McGowan v. Maryland, 366 U.S. 420, 426 (1961). See also, Exxon Corp. v. Governor of Maryland, 437 U.S. 117, 124 (1978); Williamson v. Lee Optical Co., 348 U.S. 483 (1955).

Thus, the Supreme Judicial Court applied the "debatable" standard employed by this Court in United States v. Carolene Products Corp., 304 U.S. 144, 154 (1938), reasoning that a challenge to a classification must show irrationality of that classification and will not prevail if a question is at least debatable if viewed in light of what evidence the [promulgating authority] may have had available. Id. at 153-154 (emphasis supplied).

Thus, the state court searched the record to find evidence of "debatability" and determined the Commonwealth had introduced evidence to show that tandem trailer units, even at the weight allowed by present regulation, overstressed a bridge structure to a significantly larger percentage than a single trailer unit at maximum permit weight.^{7/} This evidence, coupled with the findings of the trial court that the maximum weight for single trailer units had been increased against engineering advice, lead the court to conclude that since the regulation was supported by evidence that it preserved safety and integrity of bridge structures the equal

^{7/} App. A.; A-4.

protection claim must fail.^{8/}

This rationale comports with the analysis which this Court has applied in equal protection cases challenging economic or safety regulations. Exxon v. Governor of Maryland, 437 U.S. 117 (1978); Hughes v. Alexandria Scrap Corp., 426 U.S. 794 (1976). Appellants assert that the Supreme Judicial Court rejected the findings and conclusions of the trial court thus contravening the settled principles of appellate review. Appellant's Jurisdictional Statement, p. 14. This assertion overlooks the role of the reviewing court when presented with an equal protection claim. Once the legislature has drawn a classification, neither the findings of

^{8/} App. A.; A-6.

a court arrived at by weighing evidence nor the verdict of a jury can be substituted for it. Carolene, supra at 154. It is the very admission that facts are arguable that immunizes from constitutional attack a legislative judgment represented by a statute. Vance v. Bradley, 440 U.S. 93, 112 (1979).

B. The Commerce Clause Analysis
Employed By The Supreme
Judicial Court Fully Comports
With Decisions Of This Court.

The Supreme Judicial Court began its analysis of appellant's challenge to the Massachusetts Turnpike Authority's regulation limiting the gross weight of tandem trailers traversing the Massachusetts Turnpike by noting that the appellants did not dispute that the Commonwealth has a legitimate interest

in regulating truck weights to foster highway safety by preserving bridge and road surfaces.^{9/}

The Court noted that the regulation did not discriminate between in-state and out-of-state business and distinguished this dispute from those that this Court considered in Raymond Motor Transportation, Inc. v. Rice, 434 U.S. 429 (1978) and Kassell v. Consolidated Freightways Corp. of Del., 450 U.S. 662 (1981).

First, those cases discussed highway safety in terms of safe operation of tandems to prevent accidents rather than in the context of preserving bridge structures and roadbeds. Second, in those cases there had been no evidence

^{9/} App. A.; A. 8-11.

that safety was impaired whereas in the instant matter testimony of experts was presented as to overstress on bridges caused by tandem trailers loaded in excess of the allowed weight. Thirdly, the Supreme Judicial Court pointed out that other contiguous and neighboring states do not allow tandem trailers at all. Thus, the court not only distinguished Raymond, supra and Kassell, supra, but also confronted the notion that the Massachusetts regulation imposes an impermissible burden on interstate commerce.

Finally, the Supreme Judicial Court observes that interstate commerce is only burdened if tandem trailer operators choose to exceed the Massachusetts weight limits and must separate their trailers or reload at the Massachusetts border. Certainly, there

is not here an outright ban on tandem trailers as in Kassell, supra or Raymond, supra.

The court concluded that interstate commerce was not impermissibly burdened by the regulation.

Appellants contend that the Supreme Judicial Court characterized the regulation in question as a safety regulation rather than a regulation which sets an acceptable level of wear on road surfaces and structures.

First, in addressing this issue the appellants blatantly misquote the Supreme Judicial Court.^{10/} In addition, this assertion is a contradiction of a stipulation made by the parties and recognized by the

^{10/} Compare indented quote, Appellant's Jurisdictional Statement, p. 17 with Appendix A-8 (leaving out the term "structures" and pluralizing "surfaces").

Supreme Judicial Court that the primary purpose of the regulations is to preserve the integrity and safety of bridges under the control of the Turnpike Authority.^{11/} One cannot reasonably assert that a regulation which is promulgated for the purpose of preserving the safety of bridges is not related to highway safety.

Appellants also assail the Supreme Judicial Court's analysis of the "state interest" and "commerce burden" factors as they relate to the commerce clause, averring that the court only considered increased cost per tandem trip but failed to consider other factors. There were, however, no findings by the trial court concerning those other factors. The court found that, based on the record, the appellants had failed to

^{11/} App. A.; A-2.

show a substantial burden on interstate commerce. See generally, South Carolina Hwy. Dept. v. Barnwell Bros., 303 U.S. 177 (1938).

C. Appellant's Due Process Claims Are Equally Without Merit.

The Supreme Judicial Court treated appellant's assertion that less restrictive alternatives to the regulation in question should have been considered as a due process claim.^{12/} Appellants analyze these assertions in terms of the Commerce Clause. This distinction is of little import. The judicial function under the Commerce Clause as well as the Fourteenth Amendment, stops with the inquiry as to whether the state legislature in

^{12/} App. A.; A-G.

adopting regulations has acted within its province, and whether the means of the regulation chosen are reasonably adapted to the end sought. A court cannot determine which is the most suitable restriction to be applied of those that are possible. South Carolina Hwy. Dept. v. Barnwell Bros., 303 U.S. 177, 190 (1938).

The Supreme Judicial Court found that the regulation was not arbitrary but is rationally related to the purpose of preventing excessive stress on the Turnpike's long span bridges. Thus a comparison of less restrictive alternatives to the regulation in question is neither required or permitted.

Finally, appellants assert that the provisions of the regulation are conflicting and should be held void for

vagueness. But, as the Supreme Judicial Court correctly held the prohibition against exceeding gross weights of 127,400 pounds for tandem trailer combinations clearly puts an operator on notice of the regulation's strictures. The other sections of the regulation are merely corollaries.

III. CONCLUSION

Wherefore, Appellee respectfully submits that the question upon which this case depends is so unsubstantial as not to need further argument and Appellee respectfully moves the Court to affirm the judgment entered in this cause by the Supreme Judicial Court for the Commonwealth of Massachusetts.

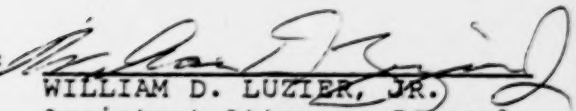
Respectfully submitted,

FRANCIS X. BELLOTTI
ATTORNEY GENERAL

FREDERICK W. RILEY
Assistant Attorney General
Chief, Criminal Bureau

BARBARA A.H. SMITH
Assistant Attorney General
Chief, Criminal Appellate
Division

By:



WILLIAM D. LUZIER, JR.
Assistant Attorney General
One Ashburton Place
Boston, Massachusetts 02108
Tel: (617) 727-2240

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